

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

RENE VAZQUEZ-BOTET,
MARCOS MORELL-CORRADA,

Defendants.

Criminal No. 04-160 (JAF)

POST-CONVICTION ORDER REGARDING
UNOPPOSED TERMS OF RELEASE PENDING SENTENCE

There is no constitutional right to bail once a person has been convicted. United States v. Baca, 444 F.2d 1292, 1296 (10th Cir. 1971), *cert. denied*, 404 U.S. 979 (1971). The 1984 amendments to the Bail Reform Act changed what had previously been a presumption *for* post-conviction bail pending sentencing to a presumption *against* post-conviction release pending sentencing. 18 U.S.C. § 1343(a)(2). The statute reads as follows in its pertinent part:

The judicial officer shall order that a person who has been found guilty of an offense . . . and is awaiting imposition . . . of sentence be detained unless . . . the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released.

In other words, the federal law we applied today clearly presumes that a convicted defendant will be jailed while he awaits his sentencing.

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1 The Senate Judiciary Committee's report on the 1984 amendments
2 to the Bail Reform Act said that,

3 [o]nce guilt of a crime has been established in
4 a court of law there is no reason to favor
5 release pending imposition of sentence . . . The
6 conviction, in which the defendants' guilt of a
7 crime has been established beyond a reasonable
8 doubt, is presumably correct in law.

9 A second policy behind what is now the presumption in favor of
10 post-conviction detention pending sentencing, according to the
11 Committee Report, is that "release of a criminal defendant into the
12 community after conviction may undermine the deterrent effect of the
13 criminal law." We firmly believe in and endorse this reasoning in
14 this type of corruption case.

15 The court's view is that denying bail pending sentence in the
16 present case reinforces the deterrent effect of the criminal laws
17 particularly well. The facts of this case are unfortunate. The
18 public and private sectors in Puerto Rico are infected by corruption,
19 to the point that the community wonders whether we have reached the
20 point of no return. Precisely because of that, this case has been
21 subjected to public scrutiny. It appears that the conduct which the
22 jury has found was deliberate and egregious. It included the
23 exploitation of positions of public trust within Puerto Rico's
24 government and political party structures for personal and political
25 gain.

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1 Defendants, with their actions motivated by greed, betrayed not
2 only their families and the community, but also a large constituency
3 of law-abiding persons that belong to the political party the
4 defendants worked for. These actions erode public confidence in the
5 very basic roots of the democratic system of government and betray
6 the democratic ideals of the political party in question.

7 Defendants conspired to extort, and indeed extorted monies from
8 government contractors, forcing them to pay bribes in order to secure
9 government contracts. Defendants participated in disguising and
10 laundering the extortion monies. They deprived the Commonwealth of
11 Puerto Rico of legitimately-due income tax payments. Now that the
12 defendants have been convicted of harming the community with these
13 criminal acts, the public's eye is closely trained on this court to
14 see what are the consequences for this kind of conduct. It is the
15 court's duty to establish that we take these crimes seriously and
16 that the consequences for this conduct bring about incarceration as
17 a powerful and needed deterrent in this community.

18 Although we would have normally ordered bail revoked in this
19 type of case, the government expressed no objection and consented to
20 the consideration of bail pending sentence. The government appears
21 to believe that the defendants do not pose a flight risk if the bail
22 is adjusted to account for the conviction.

23 In view of these circumstances, we have ordered the home
24 incarceration of the defendants pending sentence, with electronic

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1 monitoring. The government and defense counsel are granted until
2 **Wednesday, November 8, 2006**, to announce any bail stipulation
3 reached. In the absence of a stipulation or if the stipulation does
4 not merit court approval, then we will state the amount of bail
5 pending sentence. The Probation/Pretrial Department will implement
6 the terms of this Order forthwith.

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this 3rd day of November, 2006.

9 S/José Antonio Fusté
10 JOSE ANTONIO FUSTE
11 Chief U. S. District Judge